THE NEGLECTED DEPARTMENT

BY JUDGE GEORGE C. HOLT

THE original organization of the courts of the United States, which was accomplished by the Judiciary Act of 1789, was an unusually successful piece of legislation. The system thus established remained unchanged for many years, and, with certain unimportant modifications, still constitutes the national judicial establishment. But, as the business of the Federal courts has developed with the extension of their jurisdiction and the growth of the country, additional legislation has been necessary from time to time to provide for the new requirements of the judicial service. This necessary legislation has generally been adopted; but in some instances, especially in recent years, it has received inadequate consideration or has been wholly neglected. A few members of Congress seem to be hostile to the Federal courts. Many are uninterested in them and indifferent to them. And from various causes for many years there seems to have been a tendency in Congress, whenever it has become necessary to add to the regular judicial establishment or to provide for the permanent requirements of the established courts, to make inadequate provision for those objects, while, on the other hand, the creation of new and special tribunals to pass on particular classes of cases appears to be especially favored. This tendency is not entirely a recent development. Nearly twenty years ago a change in the Federal judicial system, more important than had ever occurred before, was caused by the establishment of the Circuit Courts of Appeals. The business of the Supreme Court had been for many years badly in arrears. To relieve the congestion it was determined to create a system of intermediate courts of appeal. The obviously proper thing to have done would have been to establish new and distinct courts, made up of a proper number of judges, having no

connection with the courts subject to their appellate jurisdiction. What was actually done was to create courts of appeal to be held by the existing circuit judges, with power in them to call in any of the district judges when necessary. The number of the judges constituting these courts is usually three, and they habitually sit in review of each other's decisions. This system, owing to the high character of the circuit judges, has worked well so far as the decision of the cases is concerned, but the whole scheme was fundamentally objectionable. The number of the judges constituting the court was too small. It is generally recognized that an appellate court, exercising an important jurisdiction, should consist of not less than five, and preferably of seven or nine judges, and that they should have no connection with the courts from which the appeals are taken. By this system a heavy burden of additional work was put on all the Federal judges. In the larger circuits the entire time, and in all the circuits most of the time, of the circuit judges had for some years past been occupied in appellate work. The result has been that they could take little or no part in the original trial of cases in the circuit courts, and most of that work has been done by the district judges in addition to their regular work in their own courts.

Under the new act, going into effect on January 1, 1912, transferring the original jurisdiction of the circuit courts to the district courts, the district judges will continue to do substantially all of that work. In striking contrast with this spirit of parsimony in organizing these important appellate courts has been the action of Congress in establishing various special tribunals. About the same time that the Circuit Courts of Appeals were created the Board of General Appraisers was established. Before its creation all claims of importers to recover from the Government duties alleged to have been illegally exacted were determined by actions at law against the Collector, tried by a jury. Such a tribunal was a good one to try customs cases. On the one hand, it did not incline to favor the Government, as is the tendency in all administrative boards; on the other hand, it usually contained some importers who paid their just duties and who were interested in having other importers pay theirs also. Judge Brown at that time was the only district judge in the Southern District of New York. The amount of labor that he had

to perform became more than one man could accomplish, and an additional judge was required. Acting on the theory that the cause of the congestion in the Federal courts in New York was the great number of customs cases on the calendar, Congress proceeded to create a board of nine general appraisers to determine the questions previously decided in customs cases by trials at law. It was true that there were thousands of customs cases awaiting decision on the calendar, but hundreds of such cases were precisely alike and were habitually determined by one test case. There was no real congestion in the customs cases, and the appointment of nine appraisers afforded but little relief to the court. One new judge would have accomplished the real object in view; nine new officials were appointed with salaries larger than those of the judges.

The same spirit in legislation has recently been shown in the creation of the Court of Customs Appeals and of the Commerce Court. The jurisdiction of both these courts was formerly exercised by the Circuit Courts of Appeals. None of them was in arrears. They have always heard and decided all the cases on their calendar each year. There was no congestion in the appeals in customs cases or in the appeals from the Interstate Commerce Commission. There was not only no necessity for the creation of such courts, but there are weighty objections to the establishment of any tribunal to decide exclusively a special class of cases, and particularly cases in which the Government is a party. Any court dealing constantly and exclusively with a special class of cases has a tendency to grow narrow and rigid in its decisions. It is especially important that any appellate court should habitually deal with a large variety of cases involving different principles of law, and should bring to the consideration of any particular case a knowledge of the general rules of jurisprudence and the habit of applying them in other cases. Moreover, there are special objections to the establishment of special tribunals sitting at Washington to determine Government cases. These cases are prosecuted by officials who are not infrequently too eager to succeed; and there is no higher obligation on the Federal courts than to protect the just rights of the defendant in suits brought by the United States and to prevent the zeal of the prosecuting officials from bringing about unjust results.

In the discharge of the duty of making reasonable provision for the proper requirements of the Federal courts in their ordinary administration, there is shown, in certain cases, the same indifference in Congress. Take, for instance, the continual refusal to authorize the employment of stenographers and interpreters for the Federal courts. Stenographers are now universally salaried officers in all other courts in which testimony is taken orally. Stenographic records in cases are a practical necessity in modern litigation. But no provision has ever been made by Congress for their appointment in the Federal courts. In criminal cases the district attorneys engage them and pay them, and such payments are allowed as disbursements of the district attorneys' offices. In civil cases the parties voluntarily employ them when they are employed at all. In a large number of cases there is no need of having the stenographic notes of a trial written out; the principal necessity for such a record is for use in an appeal, and when no appeal is taken a transcript of the stenographic notes is usually useless. When stenographers are appointed by law and paid a salary, the salary presumably pays for the labor of taking the notes. An additional amount is paid for a transcript of the notes by any one ordering it. The result is that no party to a suit is expected to take a copy of the testimony unless he has especially ordered it. But when there are no duly appointed court stenographers, and there is a special employment of them by counsel, they usually assume that copies of the evidence are ordered, and transcribe their notes, and the parties find themselves under an obligation to pay for them whether they need them or not. The omission to provide official stenographers in the National courts practically imposes a heavy, and, in most cases, a needless tax on the litigants.

In the same way no official interpreters are authorized for the Federal courts. The district attorneys employ interpreters in criminal cases, and the parties in civil cases in the same way as stenographers are employed. In a large number of the suits in the National courts, and particularly in criminal cases, witnesses who speak English very imperfectly or not at all are constantly called. It is of the greatest consequence in such cases that the evidence of foreign witnesses be translated accurately by an experienced interpreter. Frequently in trials, when a foreign witness is

called, no interpreter is at hand and considerable delay often occurs in obtaining one. Objections are often made to the persons proffered as interpreters or to the accuracy of the interpretation of the evidence. The persons produced as interpreters, although usually familiar with the language, often have had no experience in interpreting; and it is very striking how marked the difference is between the work of an experienced interpreter and one who has never before acted in that capacity. The very large and increasing number of foreigners in this country makes the absence of official interpreters a great defect in the organization of the Federal courts. In almost all State courts held in large cities, interpreters are authorized and salaried officials, and the necessity of providing such interpreters in the National courts has long been obvious and has frequently been urged upon the authorities at Washington. But all attempts to have such officials appointed have been fruitless.

A similar defect in the practical administration of the Federal courts is the neglect to make any adequate provision for the transfer of prisoners in criminal cases between the prisons in which they are detained and the courts in which they are tried. In almost all the cities or towns of considerable size in the country in which the State courts are held the sheriff is provided with a prison van for the transfer of prisoners between the court-house and the prison whenever such transfer is necessary. The use of such vans for such purpose is so universal and is so obviously necessary and proper that it seems incredible that the United States marshals should not be provided with them by the Government. But, although urgent applications have been made to Congress to authorize the purchase and use of such vans by the marshals, such applications have always been disregarded. The prisoners awaiting trial in the United States courts are always detained in some State or city jail, under arrangements made for such detention between the State and Federal authorities. Such jails are always some distance away and frequently are a long distance away from the Federal court. The consequence is that whenever it is necessary to have a prisoner produced in court—as, for instance, to attend a preliminary examination before a commissioner, to plead to an indictment, or to attend the trial—a deputy marshal usually leads him handcuffed, on foot, through the street on his way to and from the court. Such

a proceeding is very humiliating to the prisoner, particularly to a man of previously decent life, is offensive to the public, affords a temptation to the friends of the prisoner to attempt a rescue, and subjects the marshal to a heavy responsibility from the constant possibility of an escape.

The practice upon the final transportation of a convict after sentence to the prison in which the sentence is to be served is even worse. Formerly there were no national prisons, and all United States convicts were imprisoned in State prisons under contracts between the National Government and the States. But there are now two national penitentiaries—one at Leavenworth, Kansas, and one at Atlanta, Georgia. All persons convicted of crime in the Federal courts and sentenced to more than one year's imprisonment who are not so young as to be proper subjects for a reformatory are now sent to one of these penitentiaries, the convicts from the eastern part of the country being sent to Atlanta. But no prison car is provided. A prisoner sentenced at New York to be imprisoned at Atlanta is handcuffed at the Tombs to a deputy marshal, with whom he usually walks through the city and over the ferry to the train for Atlanta at Jersey City. The two there take seats in a car and ride handcuffed together to Atlanta, a railway journey of more than a day and night. It is said that the deputy marshals are not anxious to be designated for these trips. As a system of national prisons has been adopted, they should be established at convenient points. There should be one somewhere in the northern and eastern part of the country. But in any case, if convicts are to be sent to prison in railway trains, and particularly if they are to be sent such long distances as from the Northern States to Atlanta or Leavenworth, the Government should provide a car fitted up with a secure compartment for the convicts and a comfortable place for the marshals accompanying them. The present system will almost certainly result at some time in escapes or in dangerous attempts to escape. Many Federal convicts, such as counterfeiters, for instance, are among the most hardened and desperate criminals that exist; and it is grossly unjust to the marshals to impose such a responsibility upon them when by very simple measures they could be relieved from it. Moreover, it is indecent to subject prisoners to such public humiliation.

But perhaps the most conspicuous instance of the neglect

of the national judiciary by Congress is the existing system of buildings for the uses of the Federal courts and the entire inadequacy of some of them for present requirements.

It has always been the practice of the Government to include in one building the necessary accommodations for the postal service and the Federal courts. This was originally a very natural arrangement. Every city and town requires a post-office. In those cities in which the Federal courts are held it was a simple method of providing the necessary rooms for their use, when the business of the courts was small, to set aside rooms up-stairs in the post-office building for that purpose. The custom therefore grew up of having, even in the largest cities, a Federal Building, the lower stories of which were used for the postal service and the upper stories for the judicial service. In the small cities separate buildings for the courts and the post-office would probably have involved unreasonable cost. But the court business, particularly in recent years, tends to concentrate more and more in the large cities; and in the large cities, where the courts sit for long periods or continually, the establishment of the courts in the post-office buildings is essentially objectionable. The post-office should be, and usually is, situated in the business center, and therefore in the noisiest part of a city; the courts should be held in a quiet and undisturbed part of a city. Moreover, it is useful to have the community reminded that the Government has a judicial establishment and that it respects its courts. The building in which the Federal court sits is always known to the people as the post-office; and very few persons, even in the cities in which the Federal courts are continually held, ever see anything that suggests their existence.

In New York particularly there are many special reasons for a separate court building. In the first place, the post-office accommodations in the present building are grossly insufficient for the requirements of the postal service itself. For years past the men working there in the postal service have been excessively overworked and overcrowded, especially in summer. The whole building now could well be occupied exclusively by the New York Post-office. Undoubtedly upon the completion of the new post-office building up-town the congestion in the present office will be somewhat relieved. But there will always be a necessity for a large down-town post-office in New York. All the foreign mails

will always be distributed there, and most of the domestic business mails. If the building were turned over exclusively to the use of the postal service, and there should be at first some portion not required for that service, it would not remain so long. The postal service, like every other business in New York, grows constantly and rapidly; and if at any time there should be any unoccupied rooms in the building there would be sure to be some Government uses for them. Many years ago, when the building was first built, a number of Government inspectors and other officers unconnected with the postal or judicial service were permitted to use rooms there; but they were all forced to leave long since by the constant growth in the business of the departments for which the building was primarily designed.

Moreover, the original design and arrangement of the upper part of the building for the purpose of the courts is fundamentally and irremediably wrong. The Government architect who designed it entirely omitted the usual arrangements which should exist in all court-houses, by which the judges and court officers have access to the court-rooms and to their own chambers and offices by passages distinct from those used by the public. In the present building all the judges and court officers pass between their rooms and the court-rooms through the general corridors in the building. Judges habitually, after sentencing a convict, pass back to their chambers through an angry and weeping crowd of his relatives, friends, and often, perhaps, of his confederates. The lighting and ventilation of the building is generally poor; that of the rooms on the interior court is very bad. Many rooms, originally designed for purposes for which they are not now employed, are either too large or too small for uses to which they are now put. Large spaces are wasted; and the whole building shows a general absence of any architectural skill or capacity in its original design and arrangement.

But the original faults of the building are of slight importance in comparison with the inconvenience resulting from its present overcrowded condition. When the structure was erected Judge Blatchford was the district judge at New York and was the only judge sitting permanently in the building. Judge Benedict came frequently to New York to try criminal cases, but his chambers were in Brooklyn. Judge Johnson, the circuit judge, who lived at Utica, sat

occasionally in New York, but he was in ill health and absent during much of his term of service. Judge Blatchford performed substantially all the work except the criminal trials. He did all the bankruptcy business; he tried all the admiralty and forfeiture cases; he attended to all the extradition, *habeas corpus,* and naturalization business; in the Circuit Court he tried substantially all the common-law and customs cases with a jury, and substantially all the equity cases, including the patent cases, without a jury. Since that time, in a period of only about forty years, the judicial business in New York has grown until, in the place of one circuit and one district judge, there are now four judges of each court living and sitting constantly in New York City, and they cannot by any means do all the work without assistance. All the judges from the other districts in the circuit sit in New York, from time to time, whenever they can be spared from their own districts. With all this additional aid, it has been impossible to prevent congestion in some branches of the court, and probably it will soon be necessary to appoint more judges. The result is that it is now very difficult to obtain the necessary rooms in the building in which to do the business of the courts, and if more judges are appointed it will be a serious question whether court-rooms or chambers can be provided for them in the building. All the existing court-rooms are now constantly in use. There have been various occasions lately when judges from the other districts who could have sat in New York were prevented from doing so by the fact that there were no court-rooms available. The Interstate Commerce Commission, which often sits in New York and which formerly was usually granted the use of some unoccupied court-room in the Federal Building, has for some years past been generally obliged, at great inconvenience, to obtain a place elsewhere in which to hold its sessions. The chambers provided for the judges appointed in recent years are very inadequate and inconvenient. It has been difficult to find such rooms at all. Those selected have been originally intended for other purposes, and are, in various respects, illy adapted to the use of the judges. The out-of-town judges, most of whom sit in New York for many weeks each year, have practically no chambers at all. They occupy in common one long, ill-lighted, and wholly unfit room in which are four or five desks and chairs, one of which is allotted to each judge. It is impossible, under such cir-

cumstances, for any of them to transact any private or confidential business with any one or to dictate a letter or an opinion without annoyance to the others. The clerks' offices are in a still worse condition. With the constant growth of business the necessary number of assistants has constantly increased, and the rooms for their use are excessively crowded. The space for filing records and papers is almost entirely filled, and the clerks find constant difficulty in obtaining additional room for them, a condition which constantly increases the possibility of having important papers mislaid and of mistakes in recording. The condition of the district attorney's office is equally congested. Three or four clerks frequently occupy a single small room, and all the work of that important office is done under constant embarrassment and obstruction. The marshal's office is equally crowded.

The important work of the naturalization of aliens suffers especially from the want of adequate rooms in which to transact the business. There has been great and just complaint, particularly since the present naturalization law went into force, of the defects of the existing system of naturalization. The present law is, in its essentials, a good one, although the practice prescribed by it is, in some respects, perhaps too elaborate and complicated. But if the clerks had adequate rooms which they could appropriate to that work, and were afforded sufficient clerical assistance for that branch of their duties, most of the difficulties which have arisen under the existing act would disappear. For years past all applicants for naturalization papers have been obliged to stand in line in the public corridor outside the clerk's office while waiting their turn to enter, because the clerks have no rooms in which to receive them while waiting. The long period of standing in line is hard upon old or feeble applicants, and the line itself is a nuisance in the building. Such a method of dealing with a large crowd of aliens tends to disorder and breeds abuses of various kinds. It is especially important that all the proceedings in the naturalization of aliens should be conducted not only in an orderly, but also in a dignified and, in a certain sense, an imposing manner. The proceeding should impress the applicant with the importance of the step he is taking and with the seriousness with which it is regarded by the Government which admits him to the high privilege of citizenship. Until proper

facilities are afforded by the Government for the process of naturalization, however, our new citizens will not be impressed by it with the gravity of the proceeding or with the dignity of the Government itself.

The defects in the present Federal Building to which reference has been made are fundamental. A correction of them in some way is an absolute essential to the proper administration of justice in the Federal courts at New York. But there are many other things lacking, not so important perhaps, but which ought to be found, and are expected as a matter of course to be found, in a properly arranged courthouse. There is, for instance, no room for the use of the members of the bar; no waiting-rooms for witnesses, and particularly for women witnesses; no rooms for consultation between counsel and client; no room for representatives of the press; no proper room for the detention of prisoners awaiting trial; no suitable accommodations for jurymen; no restaurant, not even the stall of a vender of light lunches, in the building. Everything about the building is inadequate, inconvenient, overcrowded, and inferior even to most of the arrangements for the Federal courts in other cities in the country; and something should be done, and done at once, to remedy the existing conditions.

There are several ways in which this relief can be accomplished. The usual remedy suggested is to have a large portion of the building now occupied for the postal service turned over to the use of the judicial department as soon as the new post-office, to be built up-town near the new Pennsylvania Railroad station, is completed. But the postal business in the down-town office, even after the completion of the up-town office, will probably require nearly as much room in the building as is now occupied for postal purposes. The men employed in the post-office have long been working in extremely overcrowded and unhealthy rooms and have the first claim to the benefit of any new room afforded by the change. Moreover, the requirements of the service will constantly increase as the postal business develops in future years. Its growth in the past has been steady and rapid, and it is certain to continue; and in a short time, if not at once, the entire room in the building will be needed for postal purposes.

Another remedy suggested is to lease rooms outside for the use of some or all of the court officials, such, for in-

stance, as the clerks, the marshal, and the district attorney. But such a separation of the courts from their essential officers would be extremely inconvenient to the public and to all the parties concerned. Moreover, the leasing of Government premises from private parties has always proved an extravagant and unsatisfactory method of obtaining premises for the use of public officials.

Another remedy which has been suggested is to have the United States Government enter into some arrangement with the city of New York by which a part of the space in the proposed new County court-house should be assigned to the use of the Federal courts. This would be, in some respects, a convenient arrangement if it could be effected; but, for obvious reasons, it seems to be impracticable. The United States and the city of New York could hardly erect a building in joint ownership, or, if it were erected by one of them, make a satisfactory arrangement for its joint use.

The simplest and most satisfactory course to take is for the United States to acquire in New York a convenient, adequate, and quiet site, and to build upon it a court-house large enough for all the present requirements of the judicial service and so situated as to be capable of future enlargement whenever required by the growth of business. The best solution of the question would appear to be to have the Government sell back to the city the present post-office premises so that the city can remove the building and restore the site to the City Hall Park, and then for the Government to erect two buildings, one for a down-town post-office and one for a Federal court-house. But if the United States shall retain the present post-office building on its present site, it could be wholly used for postal and governmental purposes other than those of the judicial department, and a separate building for a court-house is therefore desirable in any point of view.

A weighty consideration in favor of the erection of separate Federal court-houses in this country is the importance of developing in the public a respect for law and for the tribunals which administer it. For every other department of the Government public buildings have been provided, most of which are appropriate and dignified, and some of which are magnificent. At Washington the legislative branch has its Capitol and its large new office building; the executive branch has its White House and the great buildings erected

for the use of most of the executive departments. No American visiting Washington, as he looks on these splendid public buildings, fails to feel a pride in his country for having provided for the public service such creditable structures. But the judicial department of the Government has never had any buildings provided for its exclusive use. The Supreme Court sits in a cramped court-room and occupies an inadequate and inconvenient set of rooms in the Capitol. The Department of Justice has always occupied shabby quarters leased from private owners. A new building for the use of this department is about to be erected at Washington, but no steps have been taken for a new building for the Supreme Court. All the Federal courts and judicial officers out of Washington occupy rooms over the post-offices in the cities where they sit; and there is no building in the entire country which suggests to any one that such a thing as a Federal Court of Justice exists. Why should there not be erected at Washington a dignified and noble building, like the splendid "Palaces of Justice" seen in many of the great capitals of Europe, devoted to the use of the Supreme Court and the other courts which sit at Washington? Why should there not be constructed, at least in the great cities in which the United States Circuit Courts of Appeal hold their sessions, Federal court-houses which would be recognized by every passer as the outward representation of that great department of the Government which deals with the administration of justice? At all events, one such court-house should be built in New York City. Most of the revenue of the Government is collected there; more litigated business is done in the Federal courts there than in any other city in the country; and the accommodations provided for the use of the courts there are inferior to those in most of the other cities of the country. The last Congress appropriated about $55,000,000 for the construction and repair of public buildings, principally in small cities and insignificant towns. Why should not a reasonable expenditure for such purposes be made in the metropolis of the country, in which probably a larger amount of Government business is done each year than is done in all the cities and towns for which the appropriations of $55,000,000 for public buildings have been made?

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